

**United States Department of Labor
Employees' Compensation Appeals Board**

L.W., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Phoenix, AZ, Employer**

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Docket No. 21-1325

Issued: May 3, 2022

Appearances:

Appellant, pro se

Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge

PATRICIA H. FITZGERALD, Deputy Chief Judge

VALERIE D. EVANS-HARRELL, Alternate Judge

JURISDICTION

On September 1, 2021 appellant filed a timely appeal from an August 27, 2021 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.²

ISSUE

The issue is whether appellant has met her burden of proof to establish a left ankle or foot condition causally related to the accepted November 5, 2020 employment incident.

¹ 5 U.S.C. § 8101 *et seq.*

² The Board notes that, following the August 27, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedures* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

FACTUAL HISTORY

On November 14, 2020 appellant, then a 56-year-old city delivery specialist, filed a traumatic injury claim (Form CA-1) alleging that on November 5, 2020 she twisted her left foot when she stepped out of her mail vehicle and sprained her ankle while in the performance of duty. On the reverse side of the claim form, appellant's supervisor acknowledged that appellant was injured in the performance of duty.

In a development letter dated November 18, 2020, OWCP informed appellant of the deficiencies of her claim. It advised her of the type of factual and medical evidence needed and afforded appellant 30 days to submit the necessary evidence.

In response, appellant submitted a report dated November 6, 2020 from Debra S. Goulding, a family nurse practitioner. Ms. Goulding related that on November 5, 2020 appellant stepped out of her mail truck and twisted her left foot. She related that appellant's left ankle and foot were swollen and diagnosed left ankle and foot sprain. Ms. Goulding also completed a visit summary which provided work restrictions.

Appellant submitted an x-ray report dated November 6, 2020 from Dr. Elizabeth Orme Westfall, a Board-certified diagnostic radiologist. This report described an intact left ankle, left moderate hallux valgus with minimal 1st metatarsal head spurring, and left moderate plantar calcaneal spur.

Appellant submitted reports dated November 13, 18, and 24, and December 3 and 8, 2020 from Candice Swanson, a physician assistant who diagnosed left foot and ankle sprain.

OWCP also received visit summaries from Ms. Swanson dated November 13 and 18, and December 3 and 8, 2020 which repeated appellant's diagnoses and provided work restrictions.

By decision dated December 21, 2020, OWCP accepted that the November 5, 2020 employment incident occurred, as alleged, but denied appellant's claim finding that she had not submitted medical evidence containing a medical diagnosis in connection with her accepted employment incident. It concluded, therefore, that the requirements had not been met to establish an injury as defined by FECA.

Appellant resubmitted the December 3 and 8, 2020 reports from Ms. Swanson, as well as the November 6, 2020 x-ray report.

OWCP received a claim for compensation (Form CA-7) for intermittent disability from work for the period November 6 through December 8, 2020.

On August 20, 2021 appellant requested reconsideration of OWCP's December 21, 2020 decision.

By decision dated August 27, 2021, OWCP denied modification of its December 21, 2020 decision.

LEGAL PRECEDENT

An employee seeking benefits under FECA³ has the burden of proof to establish the essential elements of his or her claim, including that the individual is an employee of the United States within the meaning of FECA, that the claim was timely filed within the applicable time limitation period of FECA,⁴ that an injury was sustained in the performance of duty as alleged, and that any disability or medical condition for which compensation is claimed is causally related to the employment injury.⁵ These are the essential elements of each and every compensation claim, regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁶

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a fact of injury has been established. There are two components involved in establishing fact of injury. The first component to be established is that the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time and place, and in the manner alleged. The second component is whether the employment incident caused a personal injury and can be established only by medical evidence.⁷

The medical evidence required to establish causal relationship between a claimed specific condition and an employment incident is rationalized medical opinion evidence.⁸ The opinion of the physician must be based on a complete factual and medical background of the employee, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and specific employment factors identified by the employee.⁹

ANALYSIS

The Board finds that appellant has not met her burden of proof to establish a left ankle or foot condition causally related to the accepted November 5, 2020 employment incident.

³ *Id.*

⁴ *F.H.*, Docket No. 18-0869 (issued January 29, 2020); *J.P.*, Docket No. 19-0129 (issued April 26, 2019); *Joe D. Cameron*, 41 ECAB 153 (1989).

⁵ *L.C.*, Docket No. 19-1301 (issued January 29, 2020); *J.H.*, Docket No. 18-1637 (issued January 29, 2020); *James E. Chadden, Sr.*, 40 ECAB 312 (1988).

⁶ *P.A.*, Docket No. 18-0559 (issued January 29, 2020); *K.M.*, Docket No. 15-1660 (issued September 16, 2016); *Delores C. Ellyett*, 41 ECAB 992 (1990).

⁷ *T.H.*, Docket No. 19-0599 (issued January 28, 2020); *K.L.*, Docket No. 18-1029 (issued January 9, 2019); *John J. Carlone*, 41 ECAB 354 (1989).

⁸ *S.S.*, Docket No. 19-0688 (issued January 24, 2020); *A.M.*, Docket No. 18-1748 (issued April 24, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁹ *T.L.*, Docket No. 18-0778 (issued January 22, 2020); *Y.S.*, Docket No. 18-0366 (issued January 22, 2020); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

Appellant submitted an x-ray report dated November 6, 2020 from Dr. Elizabeth Orme Westfall which described findings of intact left ankle, left moderate hallux valgus with minimal 1st metatarsal head spurring, and left moderate plantar calcaneal spur. The Board has held that diagnostic tests, standing alone, lack probative value on the issue of causal relationship as they do not address the relationship between the accepted employment factors and a diagnosed condition.¹⁰ For this reason, Dr. Westfall's report is insufficient to meet appellant's burden of proof.

OWCP also received a report dated November 6, 2020 from Ms. Goulding, a family nurse practitioner, as well as several reports and visit summaries from Ms. Swanson, a physician assistant, which noted diagnoses of left ankle and foot sprain. The Board has held that certain healthcare providers such as physician assistants, nurse practitioners, and physical therapists are not considered physicians as defined under FECA.¹¹ Their medical findings, reports and/or opinions, unless cosigned by a qualified physician, will not suffice for purposes of establishing entitlement to FECA benefits.¹² Consequently, Ms. Goulding and Ms. Swanson's documents will not suffice for purposes of establishing entitlement to FECA benefits.¹³

As the evidence of record is insufficient to establish that appellant has a diagnosed left ankle or foot condition causally related to the accepted November 5, 2020 employment incident, the Board finds that she has not met her burden of proof.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to establish a left ankle or foot condition causally related to the November 5, 2020 employment incident.

¹⁰ See *W.M.*, Docket No. 19-1853 (issued May 13, 2020); *L.F.*, Docket No. 19-1905 (issued April 10, 2020).

¹¹ Section 8101(2) of FECA provides that physician "includes surgeons, podiatrists, dentists, clinical psychologists, optometrists, chiropractors, and osteopathic practitioners within the scope of their practice as defined by State law," 5 U.S.C. § 8101(2); 20 C.F.R. § 10.5(t). See Federal (FECA) Procedure Manual, Part 2 -- Claims, *Causal Relationship*, Chapter 2.805.3a(1) (January 2013); see also *M.F.*, Docket No. 19-1573 (issued March 16, 2020); *N.B.*, Docket No. 19-0221 (issued July 15, 2019); *David P. Sawchuk*, 57 ECAB 316, 320 n.11 (2006) (lay individuals such as physician assistants, nurses, and physical therapists are not competent to render a medical opinion under FECA).

¹² *S.E.*, Docket No. 21-0666 (issued December 28, 2021); *K.A.*, Docket No. 18-0999 (issued October 4, 2019); *K.W.*, 59 ECAB 271, 279 (2007).

¹³ See *M.C.*, Docket No. 19-1074 (issued June 12, 2020) (nurse practitioners are not considered physicians under FECA).

ORDER

IT IS HEREBY ORDERED THAT the August 27, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 3, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board